

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE  
OF THE  
JUDICIAL CONFERENCE OF THE UNITED STATES  
SUPREME COURT BUILDING  
WASHINGTON 25, D. C.

August 27, 1960

The Honorable Albert B. Maris  
Chairman, Committee on Rules of Practice and Procedure  
Supreme Court Building  
Washington 25, D. C.

Dear Judge Maris:

Enclosed herewith is a proposed Rule respecting procedure for judicial review of decisions of the Tax Court of the United States. The proposed Rule has been prepared and is submitted by the Advisory Committee on Appellate Rules.

This Rule is authorized by special statutory authority, which is found in Section 2074 of Title 28, U. S. C., also referred to in Section 7482(c)(2) of 26 U. S. C.

The preparation of the proposed Rule was carried out by correspondence, except for an informal meeting of volunteers who served as a drafting subcommittee. Considerable material and several proposed drafts of a Rule were in existence at the time of the creation of your Advisory Committee and were available to it.

The proposed Rule deals with the portion of the appellate proceedings which take place in the Tax Court, preliminary to the institution of the proceedings in the Courts of Appeals. We delayed the latter phases for consideration when we undertake a general consideration of rules in the Courts of Appeals.

You will note that the proposed Rule is in considerable detail. The Advisory Committee decided that instead of writing a short, perhaps one-sentence, Rule which would require considerable construction, cross-referencing and perhaps result in considerable confusion, it is better to put in this one Rule all that an attorney or a litigant is required to know about seeking judicial review of a decision of the Tax Court.

The proposed Rule is self-explanatory. However, we call attention to a few features:

The procedure is cast in the form of a notice of appeal rather than as a petition for review. The former is the form used in the Civil Rules; the latter is the form used in the statutes relating to decisions of administrative agencies (example, see 15 U. S. C., paragraph 45(c); and 3 Davis, Administrative Law, Section 23.03). The notice-of-appeal procedure has been carefully followed throughout the Rule.

The time for noting an appeal has been set at 60 days (and for a second appeal by another party at 90 days). This is a shorter time than that provided by the present statute. 26 U. S. C., Section 7483. But it is our understanding that this Rule if adopted by the Supreme Court and reported to the Congress

would either supersede existing statutory provisions (except as to "substantive rights of any litigant") or revisions of existing statutes would follow in due course. The matter of such revisions would of course fall within the authority of the Committee on Revisions of the Laws. Your Advisory Committee is of opinion that a very short period of time for the filing of a notice of appeal is highly desirable. After all, this particular act, filing of the notice, is an exceedingly simple one, requiring no time in preparation or filing; and an appeal once noted is easily abandoned.

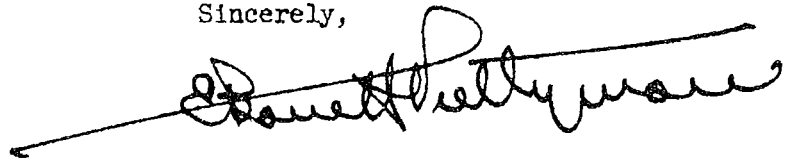
You will note that we propose to provide for the transmission of the original record. This is the simplest and least expensive method. Problems as to the printing of records or parts thereof are deferred to our general consideration of the rules of the Courts of Appeals.

You will note that the proposed Rule does not require in the notice of appeal any statement as to the nature of the controversy, or of issues or of questions presented or of facts to establish

jurisdiction or venue. It requires merely a simple notice of appeal, similar to that prescribed by the Civil Rules.

Your Advisory Committee respectfully submits the proposed Rule and requests its approval by your Committee.

Sincerely,

A handwritten signature in cursive script, which appears to read "E. Barrett Prettyman". A long, thin horizontal line is drawn across the signature, starting from the left margin and extending past the end of the signature.

E. Barrett Prettyman

Enclosure

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE  
OF THE  
JUDICIAL CONFERENCE OF THE UNITED STATES  
SUPREME COURT BUILDING  
WASHINGTON 25, D. C.

August 24, 1960

TO ALL MEMBERS OF THE ADVISORY COMMITTEE ON APPELLATE RULES:

Mr. Imlay and I, with the active assistance of Mr. Stewart, Clerk of this court, spent the day today preparing a revision of our proposed Rule, paying heed to your criticism and incorporating your suggestions, so far as we were able to ascertain your majority view. Enclosed is a copy of the Rule as thus revised.

Inasmuch as we must submit the Rule to the Committee on Rules of Practice and Procedure at its meeting here on August 31, and inasmuch as Judge Maris has asked that we submit copies to the members of that Committee in advance of the meeting, may I request that you transmit at your earliest convenience to Mr. Carl Imlay by phone or wire your approval, or disapproval, either in whole or in part, of the Rule. Mr. Imlay's mail address is Administrative Office of the United States Courts, Room 10, Supreme Court Building, Washington, D. C. His telegraph address is the same as his mail address. His phone is EX 3-1640, extension 382.

I call your attention to the following features of the revision:

1. Time is computed in days instead of months.
2. We reduced the time for noting an appeal from 90 days to 60 days; and from 120 days to 90 days in case of a second appeal.
3. We provided that the filing of certain motions should terminate the running of the time for noting an appeal. This was the almost unanimous view of the members of our Committee.

4. We provided for termination rather than suspension, following the provisions of Rule 73(a) of the Civil Rules.

5. We added a provision for an extension of time for noting the appeal in certain prescribed cases of excusable neglect, following the suggestion of Judge Miller. We took this provision from Section 2107 of Title 28, United States Code. It appears as an addition to paragraph (a) of our Rule.

6. You will notice the new provision in regard to the record when two appeals are filed.

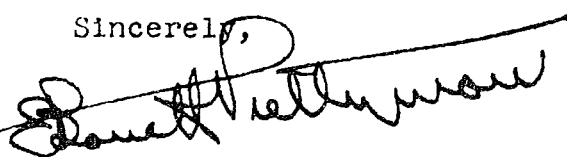
7. You will notice the provision for the record in cases where appeals are filed in two circuits.

8. We have not provided that a copy of the docket entries shall accompany the original record. This would involve preparation by the Clerk, and probably a fee. We saw no useful purpose for this document.

9. You will note that authority for the Tax Court to dismiss an appeal for cause has been stricken.

10. You will note that the phraseology of the opening provision of the Rule has been somewhat revised. This was in accordance with the suggestion of Dean O'Meara.

Sincerely,

A handwritten signature in dark ink, appearing to read "E. Barrett Prettyman", written over a horizontal line.

E. Barrett Prettyman